

**AGREEMENT BETWEEN THE CENTRAL VALLEY WATER BOARD,  
FREDERICK WEYBRET, AND THE LODI NEW-SENTINEL  
FOR CONDITIONAL COVENANTS NOT TO SUE**

**A. Parties**

This Agreement for Conditional Covenants Not To Sue (the "Agreement") is entered into among the following parties:

1. The Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board");
2. Frederick Weybret, an individual; and
3. The Lodi New-Sentinel, a California corporation.

These parties may be collectively referred to herein as the "Parties" or individually as a "Party."

**B. Background**

1. Mr. Weybret and Lodi News-Sentinel operated a business at the property located at 212 West Pine Street, Lodi, California (the "LNS Property"). The LNS Property is located within what is commonly referred to as the "Central Plume Area." Contaminants, including PCE, have been identified in the soil and groundwater beneath the Central Plume Area (the "Central Plume Contamination").
2. The Central Valley Water Board alleges that the Central Plume Area became contaminated as a result of or arising from the following: the operations at the LNS Property, the operations at certain other businesses in the Central Plume Area, and the City of Lodi's sewer main located in the alley behind the LNS Property.
3. On November 2, 2000, the City of Lodi filed a complaint for damages against the Lodi New-Sentinel and Mr. Weybret, among others, in the United States District Court for the Eastern District of California, Case No. CIV-S-00-2441 FCD/JFM, alleging that the defendants were responsible for the Central Plume Contamination (the "Lodi Action").
4. The Central Valley Water Board is the lead governmental agency responsible for oversight of the remediation of the Central Plume Contamination.
5. On April 22, 2004, the Central Valley Water Board issued Cleanup and Abatement Order No. R5-2004-0043 for the Central Plume Area ("CAO"), attached as Exhibit A. The CAO names as respondents Guild Cleaners, Inc., the City of Lodi, Lodi News-Sentinel, Odd Fellows Hall Association of Lodi, and Beckman Capital Corporation.

6. Lodi News-Sentinel challenged the CAO by filing a petition with the State Water Resources Control Board ("State Water Board"). On October 15, 2004, the State Water Board dismissed this petition.
7. On November 12, 2004, Lodi News-Sentinel filed a petition for writ of mandate against the Central Valley Water Board, challenging the CAO, in San Joaquin Superior Court, Case No. CV25145 (the "LNS Suit").
8. The City of Lodi, Lodi News-Sentinel, and Mr. Weybret have settled any and all disputes arising between them related to the Lodi Action, as described in the Settlement Agreement and Mutual Release, attached as Exhibit B. As part of this Settlement Agreement and Mutual Release, the City of Lodi has agreed to assume the obligations of the Lodi News-Sentinel under the CAO for the Central Plume Contamination.

NOW, THEREFORE, in consideration for the mutual promises set forth in this Agreement, the Central Valley Water Board, Lodi News-Sentinel, and Mr. Weybret agree as set forth below.

**C. Conditional Covenants Not To Sue**

1. The Central Valley Water Board conditionally covenants not to sue or take any judicial or administrative action to pursue any claim against Lodi News-Sentinel, Mr. Weybret, or their legal heirs, successors and assigns for: (a) costs for cleanup, abatement, removal, remedial, or investigative action (including oversight costs), or (b) corrective action.
2. The Central Valley Water Board's conditional covenants not to sue Lodi News-Sentinel and Mr. Weybret are conditioned on the following:
  - (a) The City of Lodi must comply with the CAO (exhibit A) and any amendments to the CAO related to the investigation or cleanup of the Central Plume Contamination. Compliance with the CAO includes, without limitation, compliance with applicable schedules or deadlines established by the Central Valley Water Board.
  - (b) The City of Lodi, Lodi News-Sentinel, and Mr. Weybret must comply with the Settlement Agreement and Mutual Release (exhibit B).
  - (c) Within ten days of the good faith settlement approval by the court in the Lodi Action of the Settlement Agreement and Mutual Release (exhibit B), Lodi News-Sentinel shall dismiss the LNS Suit with prejudice. Until the time that the court in the Lodi Action rules on the good faith settlement motion for the Settlement Agreement and Mutual Release (exhibit B), Lodi News-Sentinel shall not further prosecute the LNS Suit by means of any of the following actions: serving the petition for writ of mandate on the Central Valley Water Board or renewing the Lodi News-Sentinel's

demand that the Central Valley Water Board's administrative record be prepared.

3. If, at any time in the future, any one or more of the conditions in Section C.2 are not satisfied or cease to be satisfied then the Central Valley Water Board may take judicial or administrative action against Lodi News-Sentinel and Mr. Weybret. In these circumstances, postponement of enforcement of the CAO against Lodi News-Sentinel and Mr. Weybret due to the conditional covenants not to sue shall not give rise to or support a defense of laches or the applicable statute of limitations.
4. As additional consideration for the Central Valley Water Board's conditional covenants not to sue, Lodi News-Sentinel and Mr. Weybret covenant not to assert any claims or causes of action against the Central Valley Water Board, its officers, employees, or representatives related to the Central Plume Contamination.

**D. Reservation of Rights**

1. The Central Valley Water Board reserves, and this Agreement is without prejudice to, all rights against Lodi News-Sentinel and Mr. Weybret with respect to all matters not expressly included within the conditional covenants not to sue, above.
2. Notwithstanding any other provision of this Agreement, the Central Valley Water Board reserves all rights against Lodi News-Sentinel and Mr. Weybret with respect to:
  - (a) criminal liability; and
  - (b) future liability based on Lodi News-Sentinel or Mr. Weybret causing or permitting the discharge of waste.
3. Except as expressly provided in this Agreement, nothing herein is intended nor shall be construed to preclude the Central Valley Water Board from exercising authority under any law, statute or regulation with respect to anyone not a Party hereto.
4. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, anyone not a Party hereto.
5. Lodi News-Sentinel and Mr. Weybret reserve any and all rights, defenses, claims, demands, and causes of action that they may have now or in the future against the City of Lodi, including any claim regarding a breach of or noncompliance with the Settlement Agreement and Mutual Release (exhibit B).
6. Except as set forth herein, the Parties each reserve any and all rights (including but not limited to any right of contribution), defenses, claims, demands, and



causes of action that each may have with respect to any matter, transaction or occurrence relating in any way to the Central Plume Contamination against any person not a Party hereto.

7. Nothing in this Agreement shall be construed to affect the rights of any other department, office, board, agency, or organization of the State of California, except for the Central Valley Water Board.

**E. Costs and Attorneys Fees**

1. Except as otherwise provided in this Section E, the Parties acknowledge and agree that as to each other they are to bear their own costs, expenses, expert and consultant fees, and attorneys fees arising out of the matters addressed herein, the negotiation, drafting, and execution of this Agreement, and all matters arising out of or connected therewith.
2. If one or more of the conditions in Section C.2 are not satisfied or cease to be satisfied and if the Central Valley Water Board takes judicial or administrative action against Lodi News-Sentinel or Mr. Weybret then nothing herein is intended to waive the Central Valley Water Board's right to recover attorneys' fees and legal costs and expenses, including expert and consultant fees, to the extent such recovery is allowed by law (e.g., pursuant to Code of Civil Procedure sections 1021.5 and 1021.8).

**F. Integrated Agreement**

1. This Agreement supersedes any prior communications, agreements, and understandings regarding the matters contained herein between the signatories hereto or their representatives. Any prior representation, promise, or condition in connection with such matters that is not incorporated in this Agreement shall not be binding upon any of the Parties.

**G. Binding Effect**

1. Subject to the conditions found in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the Parties as well as their respective officers and directors, the respective heirs, executors, administrators, trustees, beneficiaries, predecessors, successors, affiliated and related entities, officers, directors, principals, agents, employees, assigns, representatives, and all persons, firms, associations, and/or corporations connected with them, including, without limitation, their sureties and/or attorneys, except as otherwise provided by this Agreement.
2. The City of Lodi shall not be treated as a legal heir, successor or assign of Lodi News-Sentinel or Mr. Weybret.

**H. Benefit of Counsel/Consultant**

1. In entering into this Agreement, each Party represents and warrants that it is not relying on any representations, opinions, conclusions, recommendations, or opinions expressed by, provided by, or inferred from any other Party to this Agreement, any attorney for any other Party, or any other Party's experts, consultants, or agents.
2. Each Party represents and warrants that it has been fully advised by its attorney concerning the effect and finality of this Agreement, and that the Party understands, without reservation or doubt, the effect and finality of this Agreement.

I. Counterparts

1. This Agreement may be executed in counterparts, and all so executed shall be binding upon all Parties hereto, notwithstanding that the signatures of the Parties' designated representatives do not appear on the same page.

J. Representations and Warranties

1. The Parties represent and warrant that each Party warrants that it is fully authorized to enter into this Agreement on behalf of itself and that each Party's signatory is authorized to sign on behalf of the Party.

K. Governing Law

1. This Agreement is entered into and shall be interpreted in accordance with the laws of the State of California.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

